In the Matter of	)
	)
Inmarsat Global Limited	)
	) File No. SAT-PPL-20050926-00184
Petition for Declaratory Ruling to Provide	)
Mobile Satellite Service to the United States	)
Using the 2 GHz and Extended Ku Bands	)

CONSOLIDATED RESPONSE OF INMARSAT GLOBAL LIMITED

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Inmarsat responds to the Objection to the Acceptance of Application for Filing of TMI/TerreStar and the Opposition to Petition for Declaratory Ruling of ICO (the "Opponents"), each filed in response to Inmarsat's Petition for Declaratory Ruling seeking U.S. market access for a 2 GHz MSS system (the "Petition"). The arguments made by each TMI/TerreStar and ICO (collectively, the "Opponents") are largely the same, and are addressed in this consolidated response for the sake of efficiency.

I. INTRODUCTION AND SUMMARY

Twenty-four MHz (2 x 12) of MSS spectrum is available for re-licensing as a result of recent 2 GHz MSS license cancellations. Inmarsat, a non-U.S.-licensed entity, has filed its Petition seeking U.S. market access in a portion of the 2 GHz spectrum that is currently unassigned. Each of the Opponents (i) also is non-U.S.-licensed (TMI/TerreStar through Canada, and ICO through the U.K.), (ii) holds a 2 x 4 MHz spectrum reservation from the Commission at 2 GHz, and (iii) also seeks access to the 2 GHz spectrum that is unassigned.

Inmarsat's Petition presents the Commission with a unique opportunity to enhance competition in the 2 GHz band by promptly authorizing Inmarsat as a third entrant at 2 GHz, without opening a new processing round. Thus, it provides a means to avoid the undesirable result of licensing to duopoly in this nascent band, and awarding the entire band to

entities that remain at least two to three years away from deploying their systems that were first authorized in 2001.

The procedural arguments the Opponents raise against Inmarsat are based neither on the Commission's rules nor its case law. Most fundamentally, the Opponents' arguments are flawed because they wholly fail to address the application of the Commission's rules to the facts at hand---the only entities seeking access to the 2 GHz MSS band are *three non-U.S.-licensed entities* (*i.e.*, there are no applicants for a U.S. satellite license).

As demonstrated below, there is no basis to the Opponents' allegations that Inmarsat's Petition is procedurally deficient and should be dismissed: (i) a Petition for a Declaratory Ruling *may* be filed for a satellite system in a band other than the conventional C and Ku FSS bands; (ii) a Petition for Declaratory Ruling *may* be filed before a satellite is in orbit; (iii) Inmarsat *may* seek market access for a 2 GHz MSS system *outside of a new processing round*; and (iv) addressing Inmarsat's request at the same time as the Commission addresses the Opponents' request for more 2 GHz MSS spectrum would lead to a more informed decision.

In short, Inmarsat is entitled to be treated the same as a host of other non-U.S.-licensed satellite operators who have obtained U.S. market access without being subject to the procedural hurdles that the Opponents, themselves non-U.S.-licensed, try to impose.

II. A PETITION FOR DECLARATORY RULING IS AN APPROPRIATE VEHICLE FOR INMARSAT'S REQUEST

Section 25.137 of the Commission's rules specifies acceptable methods for seeking authority for a non-U.S.-licensed space station to serve the United States.[1] One method involves filing a petition for declaratory ruling, like Inmarsat's. Nothing in Section 25.137 limits petitions for declaratory ruling to FSS systems in the conventional C- and Ku-bands, as ICO

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[1] 47 C.F.R. § 25.137(a).

wrongly claims.[2] The *DISCO II Reconsideration Order*, which established the petition for declaratory ruling mechanism, expressly referenced using a petition to obtain market access for satellite services other than the FSS (such as DBS and DARS), and therefore allowed a petition to be used for systems in bands *other than* the conventional C- and Ku-bands.[3] An applicant seeking a petition for declaratory ruling in the conventional C- and Ku-bands *also* can seek to be placed on the Permitted Space Station List (as also established in the *DISCO II Reconsideration Order*), but that is an added benefit, not a *sine qua non* for grant of a petition for declaratory ruling.[4]

Consistent with *DISCO II,* Telesat Canada filed and was granted a petition for declaratory ruling to obtain market access over the Ka band payload of Anik F2, *which by definition was not eligible for the Permitted Space Station List.*[5] The Commission considered and granted Telesat Canada's petition for declaratory ruling to provide service over Ka-band

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2 ICO Objection at 7. This is the "Third Procedure" that ICO wrongly asserts is limited to FSS systems "in the conventional C- and Ku-bands," and not to any other satellite services. *Id.*

3 *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, 12 FCC Rcd 24094 (1997) ("*DISCO II*"), *on reconsideration,* 15 FCC Rcd 7207, 7211 ¶ 8 (1999) ("*DISCO II Reconsideration Order*") (discussing DBS and DARS services, which do not use the conventional C or Ku bands). ICO therefore is wrong when it asserts that that *DISCO II* "expressly declined to permit" non-U.S.-licensed MSS and other non-C-band/Ku-band FSS systems to submit declaratory ruling petitions." ICO Opposition at 8.

4 *Telesat Canada,* 17 FCC Rcd 25287, 25288 ¶ 3 (2002) ("If a satellite granted access operates in the conventional C- and Ku-bands, the satellite operator may *also* request authority to be added to the "Permitted List.") (emphasis added).

5 *Id.* at 25294 ¶ 22. TMI-TerreStar's claim that the *Telesat* case involved only a petition for declaratory ruling to be included on the Permitted Space Station List therefore is wrong. It involved a request to be added to the Permitted Space Station List in the C/Ku-bands, and a separate petition for declaratory ruling to provide service in the Ka-band. *Id.* at 25287, 25289 nn.2 & 11.

frequencies. Similarly, SES is currently using a petition for declaratory ruling as the vehicle for its pending quest for a DBS system to serve the U.S.[6]

Thus, a petition for declaratory ruling is a legitimate mechanism for Inmarsat's market access request to provide MSS services, and for any other satellite services that are not eligible for inclusion on the Permitted Space Station List.[7]

III. A PETITION FOR DECLARATORY RULING MAY BE FILED BEFORE LAUNCH AND OUTSIDE A ROUND

Both Opponents concede that petitions for declaratory ruling may be considered outside of a processing round context once a satellite is launched.[8] However, the Opponents fail to recognize that a petition for declaratory ruling also may be granted outside of a processing round, and before the satellite at issue is launched. Namely, (i) they ignore a line of cases where the Commission considered and granted petitions for declaratory ruling outside of a processing (and round prior to launch), and (ii) they fail to recognize that nothing in Section 25.137 of the Commission's rules, which specifies the requirements for market access requests, limits the filing of a petition for declaratory ruling prior to launch or outside of a processing round.

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6 *See Satellite Space Applications Accepted For Filing*, Public Notice, Report No. SAT-00110 (rel. May 17, 2002) (referencing SES's petition for declaratory ruling to serve the U.S. market using DBS spectrum).

7 Inmarsat does not seek to be added to the permitted space station list. Inmarsat's response to item 43 of its Form 312 makes that clear.

8 TMI/TerreStar Objection at 6 (claiming that Inmarsat's request to be considered outside a processing round is premature, but that procedure would be available if "the space station has been constructed, launched, and placed into operation"); ICO Objection at 6 (Commission requires that "spectrum reservations be accorded outside of processing rounds only to those operators with launched satellites.").

A. Case Law Mandates Acceptance and Consideration of Inmarsat's Request

Prior the *Space Station Licensing Reform Order*, the processing round mechanism was the only way for entities to seek a *U.S. satellite license*.[9] This was true for FSS systems as well as MSS systems. Nonetheless, since *DISCO II,* the Commission has considered *market access requests by non-U.S.-licensed entities (like Inmarsat) outside the context of a processing round*. On at least four occasions, the Commission has allowed non-U.S. entities to use a petition for declaratory ruling, like Inmarsat, filed prior to launch and outside of a processing round, to obtain U.S. market access:

- In January 2001 and February 2001, EUTELSAT's filed two different petitions for declaratory ruling to access the U.S. market over unlaunched satellites, which the Commission accepted for filing and granted.[10]
- In September 2001 and March 2002, Telesat Canada filed two different petitions for declaratory ruling to access the U.S. market over an unlaunched Canadian-licensed satellite, each of which the Commission accepted for filing and granted.[11]
- In August 2002, Spacecom filed a petition for declaratory ruling to access the U.S. market over an unlaunched Israeli-licensed satellite, which the Commission accepted for filing and granted.[12]

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9 *Amendment of the Commission's Space Station Licensing Rules and Policies, Mitigation of Orbital Debris*, 18 FCC Rcd 10760, 10767-768 (2003) ¶ 8 ("*Space Station Licensing Reform Order*").

10 *Applications Accepted For Filing*, Public Notice, Report No. SAT-00064 (rel. Feb. 16, 2001); *European Telecommunications Satellite Organization (EUTELSAT)*, 16 FCC Rcd 15961 (2001).

11 *Satellite Space Applications Accepted For Filing*, Public Notice, Report No. SAT-00106 (rel. Mar. 25, 2002) (Ka-band petition for declaratory ruling); *Applications Accepted For Filing*, Public Notice, Report No. SAT-00087 (rel. Oct. 9, 2001) (C/Ku-band petition for declaratory ruling); *Telesat*, 17 FCC Rcd at 25287 ¶ 1.

- In October 2002, Loral Skynet do Brazil filed a petition for declaratory ruling to access the U.S. market over an unlaunched Brazil-licensed satellite, which the Commission accepted for filing and granted.[13]

Each of these petitions for declaratory ruling was filed and accepted for filing prior to the *Space Station Licensing Reform Order*, notwithstanding that (i) each sought to serve the U.S. in a satellite band that would have been subject to processing round procedures if a different entity were seeking a U.S. license,[14] and (ii) the underlying EUTELSAT, Israeli, Brazilian and Canadian satellites had not yet been launched.[15]

ICO itself admits that the *Space Station Licensing Reform Order* "re-affirmed [the] existing regulatory framework for considering U.S. market access requests,"[16] yet ICO wholly ignores this line of cases involving unlaunched spacecraft when it asserts (without support) that the Commission requires that "spectrum reservations be accorded outside of processing rounds only to those operators with launched satellites."[17]

ICO baselessly asserts that providing Inmarsat market access would somehow

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12 *Satellite Space Applications Accepted For Filing*, Public Notice, Report No. SAT-00121 (rel. Sep. 13, 2002); *Spacecom Satellite Communications Services S.C.C. Ltd.*, 18 FCC Rcd 14433 (2003).

13 *Satellite Space Applications Accepted For Filing*, Public Notice, Report No. SAT-00127 (rel. Oct. 30, 2002); *Loral Skynet do Brazil*, 18 FCC Rcd 26751 (2003).

14 More recently, the Commission granted Star One's petition for declaratory ruling to access the U.S. market over an unlaunched Venezuelan satellite. *Star One S.A.,* 19 FCC Rcd 16334 (2004). This case further demonstrates that launch is not a requirement for consideration and grant of a petition for declaratory ruling.

15 ICO curiously remarks that Inmarsat does not seek waiver of the in-orbit "requirement," ICO Opposition at 5 & n.5. No such waiver is required by Section 25.137, and none of the Commission grants of market access discussed above required a waiver even though the spacecraft at issue had not yet been launched.

16 ICO Opposition at 4.

17 ICO Opposition at 6.

allow Inmarsat to fail to construct a 2 GHz MSS system and thereby would "unfairly deprive" ICO of spectrum. ICO disregards the application of the Commission's strict milestones and bond posting requirements, which will ensure Inmarsat's prompt deployment. (Unlike ICO, Inmarsat has no issues with securing its performance to the Commission.[18]) More fundamentally, allowing Inmarsat to use a portion of the currently unlicensed 2 x 12 MHz at 2 GHz would not "deprive" ICO of anything. Indeed, ICO has no legitimate expectation that it ever would have more than a 2 x 4 MHz spectrum reservation at 2 GHz: (i) the Commission last determined that 2 x 2.5 MHz was adequate to commence 2 GHz MSS service;[19] (ii) ICO signed a non-contingent satellite construction agreement, and presumably has spent significant sums on spacecraft construction, based on a 2 x 4 MHz assignment; and (iii) just last year, when TMI's 2 GHz license was reinstated, the FCC affirmed that it had not decided what to do with any returned 2 GHz spectrum.[20]

The WTO commitments of the United States mandate that Inmarsat be treated no less favorably than other entities seeking U.S. market access that were not subjected to the procedural hurdles that the Opponents try to erect. As set forth in this Response, there is nothing "procedurally defective" about Inmarsat's Petition for Declaratory Ruling.[21] Consistent with past precedent, the Commission can and should accept for filing and grant Inmarsat's Petition for Declaratory Ruling to serve the U.S. market over its U.K.-authorized 2 GHz MSS satellite.

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[18] ICO seeks to avoid posting a bond to secure performance under its new 2 GHz GSO MSS authorization. *See* ICO Satellite Services G.P., Petition for Partial Reconsideration, File No. SAT-MOD-20050110-00004 (filed Jun. 23, 2005).

[19] *The Establishment of Policies and Service Rules for Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127, 16138 ¶ 17 (2000).

[20] *TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc. Application for Review and Request for Stay*, 19 FCC Rcd 12603, 12621 ¶ 52 & n.97 (2004).

[21] *Cf.* ICO Opposition at 1-2 (citing 47 C.F.R. § 25.112).

B. Commission Rules Allow Inmarsat's Petition to Be Considered Outside of a Processing Round

Section 25.137 governs market access for non-U.S.-licensed satellites to serve the United States, and thus governs Inmarsat's Petition. Section 25.137 provides three avenues for non-U.S.-licensed entities to serve the U.S.: (1) participating in a processing round in which other entities are seeking U.S. licenses, (2) participating in a first-come first-served queue to be considered ahead of U.S. license applicants; and, (3) where there are no other U.S. license applicants (as here), granting market access outside the strictures of a processing round or the "first come" queue.[22]

This interpretation is supported by a plain reading of Section 25.137(c), which discusses the potential application of the "first-come" queue and a processing round to a market access request *only* where U.S. license applicants also are at issue. Section 25.137(c) does not describe all cases where a petition for declaratory ruling might be appropriate. It does not cover the situation in the *Telesat* case, where an entity sought market access via a petition for declaratory ruling, outside a processing round, and for the same orbital location and frequency band already licensed to U.S. entity in a preceding round.[23] If Section 25.137(c) did apply to the *Telesat* case, paragraph 113 of the *Licensing Reform Order* would have mandated that Telesat's

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[22] *See* 47 C.F.R. § 25.137 (a)-(b) (discussing market access requirements generally), (c) (discussing the relationship between U.S. license applicants and non-U.S.-licensed space station operators who avail themselves of processing rounds and first-come first-served queues); *see DISCO II*, 12 FCC at 24174 ¶ 188 (stating that non-U.S.-licensed space stations can be considered "independent of a processing round").

[23] *Telesat*, 17 FCC Rcd at 25295-25296 ¶ 25. Prior to *Telesat*, if a non-U.S. satellite operator did not file within a certain window of time and the applicable spectrum was licensed to another entity, it might be precluded from getting in the applicable band again, and in fact would have to wait for the Commission to commence a new processing round. *See Pacific Century Group, Inc.*, 16 FCC Rcd 14356 (2001) ("*PCG*") (a pre-WTO decision in which the Commission denied market access to PCG, even though PCG had ITU priority at its desired orbital slots, and even though the U.S. entities licensed at those slots had licenses conditioned on coordination obligations).

request be dismissed because the orbital location in question was already licensed. Nor can Section 25.137(c) be read to apply to the situations presented in other market access cases discussed above, all filed outside a processing round (under a prior iteration of 25.137(c)), before the *Licensing Reform Order* became effective, and at a time when processing rounds were the only way a U.S. satellite license could be obtained.[24]

TMI/Terrastar's emphasis on the fact that, in *Telesat*, the U.S.-entity's license was conditioned on coordination with other non-U.S. satellites within 2° is unremarkable and had no bearing on whether Telesat had to participate in a processing round in order to file its market access request and have that request considered.[25] Commission regulations state that *all* Part 25 applicants, licensees and permittees are subject to coordination requirements and no such satellite network is entitled to any interference protection unless it complies with ITU coordination obligations.[26] Nothing in KaStarCom's license suggested that the Commission might authorize another entity at the same orbital location while KaStarCom held its license. To the contrary, the Commission based consideration of Telesat's request, outside of a processing round, on its broader policies. In this case, considering Inmarsat's request, and authorizing it as a third non-U.S.-licensed system in the band, is warranted by Commission competition policies: (i) concerns about licensing to duopoly in a nascent band, and (ii) recognition of the possible need to limit the amount of spectrum assigned to any one NGSO-like system to avoid other

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24 *See supra*, notes 9-13 and accompanying text.

25 *Cf. PCG*, 16 FCC Rcd at 14356 ¶ 1 (denying market access at desired orbital locations despite PCG's ITU priority and the fact that the U.S. entities licensed at the desired orbital locations had licenses conditioned on coordination obligations).

26 *See* 47 C.F.R. § 25.111(b).

service providers unreasonably being precluded access to the U.S. market.[27] Thus, KaStarCom's coordination obligation is not a relevant distinction between Telesat and Inmarsat's Petition.

In short, the provisions of Section 25.137(c) that reference a processing round apply, by their very terms, only where a *non-U.S.-licensed* space station operator seeks to have its market access request considered *contemporaneously with a U.S. satellite applicant* in the same processing round. That is not the case here. Inmarsat seeks market access in a band where the only other entities requesting the right to use the spectrum are other *non-U.S.-licensed entities*.[28] The Petition for Declaratory Ruling permitted by the more general provisions of Section 25.137 therefore is a legitimate avenue by which Inmarsat may seek market access at 2 GHz, to be considered contemporaneously with TMI/TerreStar's and ICO's quest for more 2 GHz spectrum.[29]

Nor does Section 25.157 of the Commission's rules, which governs the use of processing rounds to issue U.S. satellite licenses, mandate a different result. As an initial matter, Section 25.157 does not apply to the 2 GHz band. As Inmarsat demonstrated in its Petition, the

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27 *See Space Station Licensing Reform Order*, 18 FCC Rcd at 10774-10775, 10788-10789 ¶¶ 25, 64.

28 *Compare id.* § 25.137(c) (providing for a non-U.S.-licensee to be considered contemporaneously in a processing round along with U.S. license applicants, or in a "first come" queue ahead of U.S. license applicants).

29 The permissive, but not mandatory, use of processing rounds is not only consistent with precedent, but also with the plain language of Section 25.137(c), which states that non-U.S.-licensees "can" be considered in the processing round context. Section 25.137 almost exclusively use the mandatory term "must." *See* 47 C.F.R. §§ (a), (b), (d), (g) (requiring, for example that applicants "must" include a Form 312 and certain other information in their petitions for declaratory ruling, "must" post a bond if not yet launched when authorized, and "must" notify the Commission in the event of a transfer of control). If the Commission meant that non-U.S. applicants "must" seek market access pursuant to these mechanisms, the Commission would have used such mandatory language. *See, e.g., Weinstein v. Albright*, 261 F.3d 127, 137 (2nd Cir. 2001) (quoting *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947) ("when the same [statute] uses both 'may' and 'shall,' the normal inference is that each is used in its usual sense -- the one act being permissive, the other mandatory")).

Commission has clearly indicated that the *Space Station Licensing* proceeding did not address how abandoned 2 GHz spectrum would be re-licensed.[30] Thus, Section 25.157 does not apply to the 2 GHz band. But even if the Commission were to find that Section 25.157 applies to 2 GHz, by its terms, the section applies only to "license applications."[31] Market access applications, such as Inmarsat's request here, simply are *not* the same as license applications.[32] The Commission's processing round procedures set forth in Section 25.157 apply to non-U.S.-licensed entities only to the limited extent provided by Section 25.137(c)—when seeking market access *contemporaneously* with U.S. license applicants in the same band.[33]

This result also is consistent with the text of the *Space Station Licensing Reform Order,* which preserved the Petition for Declaratory Ruling market entry mechanism. In that order, the Commission made clear that petitions for declaratory ruling are an alternative entry mechanism for non-U.S. space stations not only in the processing round context, but also in the new first-come first-served context.[34] The Commission also extended to the new first-come first-served context the general principle (previously applied in processing rounds) that if a U.S. space station applicant files out of time, the Commission will not consider the application.[35] The

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30 Petition at Exhibit E, pp. 22-23.

31 *See* 47 C.F.R. § 25.157.

32 *Space Station Licensing Reform Order*, 18 FCC Rcd at 10873 ¶ 301; *DISCO II*, 12 FCC Rcd at 24174 ¶ 188 ("We will not issue a separate, and duplicative, U.S. license for a non-U.S. space station"); *DISCO II Reconsideration Order*, 15 FCC Rcd at 7212 ¶ 9.

33 Inmarsat's August 24, 2005 proposal for a modified 2 GHz licensing mechanism is not, as TMI/TerreStar asserts, an "admission" that a processing round must be held. *See* TMI/TerreStar Objection at 4, n.10. Inmarsat simply proposed an expedited means for licensing multiple new entrants in the 2 GHz band.

34 *Space Station Licensing Reform Order*, 18 FCC Rcd at 10870 ¶ 296.

35 *Id.* at 10806 ¶ 113 ("[I]f an application . . . reaches the front of the queue that conflicts with a previously granted license, we will deny the application rather than keeping the application on file in case the lead applicant does not construct its system."), 10776 ¶ 30 (discussing the

Commission was explicit, however, that this general principle *does not apply to non-U.S.-licensed applicants for market access:* a non-U.S.-licensed space station operator seeking U.S. market access will be considered even if another "non-U.S.-licensed satellite operator is authorized to provide service in the U.S.," so long as that other non-U.S.-licensed system has not been launched.[36]

Thus, just as the Commission previously allowed non-U.S.-licensed entities to seek access outside a processing round, the Commission has anticipated, and provided for, a non-U.S.-licensed entity to seek market access outside the strictures of the first-come first-served queue. The treatment of non-U.S.-licensed entities is the same regardless of the licensing mechanism that applies to U.S. license applicants (processing round or first-come queue).

IV. THE OPPONENTS' OTHER ARGUMENTS ARE SPURIOUS

A. Inmarsat's Withdrawal from a Now-Concluded Processing Round Does Not Preclude a Subsequent Market Access Petition

In a November 2000 Public Notice, the Commission granted Inmarsat's request to withdraw its letter of intent to participate in the Commission's first 2 GHz processing round, which concluded with the licensing of eight entities in 2001.[37] In its two-sentence Public Notice entry, the Satellite Policy Branch dismissed Inmarsat's letter of intent *without prejudice* and confirmed that the dismissal did not preclude Inmarsat from participating in a later processing round.[38] That Public Notice in no way bars Inmarsat *five years later* and after the conclusion of

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"cut-off" procedure in the processing round context). Claims that the processing round mechanism round's cut-off requirements are more exacting than the first-come first-served queue requirements thus are unfounded. *See e.g.* ICO Opposition at 5-7.

36 *Space Station Licensing Reform Order*, 18 FCC Rcd at 10870 ¶ 296.

37 *See Satellite Policy Branch Information*, Public Notice, Report No. SAT-00061 (rel. Nov. 29, 2000), at 2 (granting Inmarsat's withdrawal without prejudice).

38 *Id.*

the first round, from filing a petition for declaratory ruling, as TMI/TerreStar claims. Section 25.153 of the Commission's rules bars an entity from filing again within one year of the date its application is dismissed *with* prejudice. It is absurd to suggest that this Public Notice imposed a greater constraint that a dismissal with prejudice would have had, or that it barred Inmarsat from availing itself of the legal authority to file outside a processing round, as other non-U.S.-licensed entities have done in the intervening years.[39]

B. Consideration of Inmarsat's Petition for Declaratory Ruling Ensures a Complete Record in IB Dockets 05-220 and 05-221

The Commission recently sought comment in two Public Notices about how it should redistribute 2 GHz spectrum made available when prior 2 GHz MSS licensees surrendered their authorizations.[40] Inmarsat repeatedly has advocated in those proceedings that the public interest would be served by ensuring that more than two entities have the ability to serve the U.S. in the nascent 2 GHz band. The Opponents have asserted in IB Docket Nos. 05-220 and 05-221 that Inmarsat's interest in 2 GHz is too inchoate to be considered, and that Inmarsat has no standing to have its interests considered. Any question about Inmarsat's interest and standing is resolved by Inmarsat's specific MSS satellite system proposal now pending before the Commission. Consistent with Inmarsat's prior advocacy, Inmarsat has presented the Commission with a concrete solution for enhancing competition at 2 GHz---a request for market access using an MSS system that Inmarsat intends to deploy within five years after receipt of

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[39] If the Commission determines nevertheless to hold a processing round for the 2 GHz band and to consider Inmarsat's market access request as part of that round, Inmarsat respectfully requests that its market access request be treated as a Letter of Intent.

[40] *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, IB Docket No. 05-220, FCC 05-133 (rel. Jun. 29, 2005); *Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies*, Public Notice, IB Docket No. 05-221, FCC 05-133 (rel. Jun. 29, 2005).

Commission authority, and in a manner fully compliant with Commission rules. In other words, Inmarsat's Petition responds directly to the issues raised in IB Docket Nos. 05-220 and 05-221.

Considering Inmarsat's Petition for market access in the band simultaneously with the issues in IB Docket Nos. 05-220 and 05-221 will not "prejudice" the outcome of those proceedings. Rather, it will inform the optimal resolution of those proceedings and lead to the development of a more complete record. Moreover, ICO's and TMI/TerreStar's concerns should be belied by their confidence in the Commission's ability to consider Globalstar's pending petition for reconsideration of its 2 GHz MSS license cancellation in parallel with consideration of the proposed redistribution of returned spectrum.[41]

V. CONCLUSION

With the submission of Inmarsat's request for market access, the Commission now is faced with requests by three different non-U.S.-licensed systems for access to the 2 GHz band. This is the perfect opportunity to accommodate them all under the Commission's market access policies, and avoid a duopoly in the band, by dividing the 2 GHz band spectrum among those three entities. The *Space Station Licensing Reform Order* demonstrates the Commission's policy not to allow only two providers in a nascent band. The Commission should deny ICO and TMI/TerreStar's attempts to prevent the competitive entry of a third 2 GHz system.

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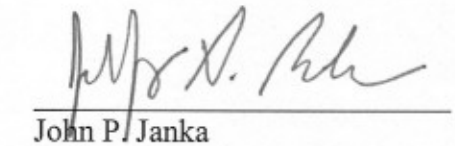
[41] *See* Reply Comments of ICO Satellite Services G.P., IB Docket No. 05-220, at 13 (Jul. 25, 2005) ("contrary to Globalstar's contention, the proposed redistribution of 2 GHz MSS spectrum to ICO would not prejudice, but rather would be subject to the outcome of Globalstar's pending petition for reconsideration of its 2 GHz MSS license cancellation"); Reply Comments of TMI and TerreStar, IB Docket No. 05-220, at 21-22 (Jul. 25, 2005).

For the foregoing reasons, the Commission should dismiss the objections of ICO and TMI/TerreStar, and promptly grant Inmarsat's Petition for Declaratory Ruling.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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